

REMARKS

Claims 27 and 28 have been added. Claims 1-8, 10, 12-15, 19-23, 27 and 28 are now pending in the application. Reexamination and reconsideration of the claims, in view of the amendments and discussion below, are respectfully requested.

The specification amendment for page 4, line 13 et seq. has been resubmitted in proper form. It is submitted that this amendment overcomes the objections in paragraphs 1 and 3 of the Office Action.

The examiner rejected claims 1-3, 7, 8, 10 and 12-14 under 35 U.S.C. 103(a) as being unpatentable over Lloyd (EP 0 104 039) in view of Wilson III (U.S. Patent No. 5,361,779). In addition, the examiner rejected claims 1 and 3-6 as being unpatentable over Kaysersberg (WO 94/22405) in view of Wilson III.

Lloyd describes tampons with a flexible guide tube forming a sleeve around the tampon body in order to minimize contact between the vaginal wall and the surface of the tampon during insertion. Lloyd does not disclose or suggest the use of an absorbent pad worn outwardly of the vaginal orifice. Reference numeral 6 in Lloyd designates a piston guide (see page 27, lines 13-14 and 24-26) and does not designate a "pad", and the guide is not "wearable outwardly".

The examiner points out in the Responses to Arguments that the claims do not require the pad be worn entirely outwardly of the vaginal orifice. Applicant believes the argument above sufficiently responds to the examiner's reason for citing Lloyd in this regard. However, in an effort to advance the case, applicant has submitted new claim 27, dependent on claim 1, which recites "the pad is configured to be wearable only externally to the vagina of the wearer". It is submitted that this language, although believed unnecessary, clearly distinguishes the present invention over Lloyd.

Kayserberg describes a sanitary product comprising an absorbent pad 2 and an internal plug 3. The plug 3 is used to drain the menses towards the pad 2 and may be made of a hydrophilic material so that the menses is absorbed and migrates by capillarity towards the pad. An impermeable membrane 6, 66, 666 is used to place the plug into the vagina. It is pointed out that the membrane differs from the claimed sheath in that it does not join the plug to the pad but instead is only attached to the pad.

In response to prior arguments, the examiner points out in the Responses to Arguments that the claims do not require joining of the plug and pad only by the sheath. Applicant believes the argument above sufficiently responds to the examiner's reason for citing Keyserberg in this regard. However, in an effort to advance the case, applicant has submitted new claim 28, dependent on claim 1, which recites that "the plug is connected to one end of the sheath and the pad is connected to the other end of the sheath". It is submitted that this language, although believed unnecessary, clearly distinguishes the present invention over Keyserberg.

As explained in the specification (see page 7 of the English text), it is preferred that the sheath has a smaller diameter than that of the plug. As the sheath is positioned at the vaginal orifice in use, this reduces pressure exerted on the vaginal orifice by the product and significantly improves comfort for the wearer. The sheath should be able to receive a finger, which is likely to have roughly the same or a slightly larger diameter than a small conventional tampon. It is therefore advantageous that the sheath is resiliently expendable in a radial direction to receive a finger during the insertion of the plug into the vagina. In addition, it is particularly advantageous that the sheath is elastic only in the circumferential direction because significant elasticity in the longitudinal direction may be undesirable as it can lead to misplacement of the plug.

Lloyd and Keyserberg do not disclose or suggest that the sheath is "elastic in only a circumferential direction, which allows for radial expansion" nor do they address the issue of plug misplacement. As explained in the specification, it is preferred that the sheath has a

smaller diameter than that of the plug. As the sheath is positioned at the vaginal orifice in use, this reduces pressure exerted on the vaginal orifice by the product and significantly improves comfort for the wearer. The sheath should be able to receive a finger, which is likely to have roughly the same or a slightly larger diameter than a small conventional tampon. It is therefore advantageous that the sheath is resiliently expendable in a radial direction to receive a finger during the insertion of the plug into the vagina. In addition, it is particularly advantageous that the sheath is elastic only in the circumferential direction because elasticity in the longitudinal direction may be undesirable as it can lead to misplacement of the plug.

Wilson III relates to a tubular sheath article, such as a condom (see abstract). The article comprises a sheath and a knitted retention band disposed at the proximal portion of the condom and arranged and constructed to bear compressively on a sheathed part reposed in the interior volume of the sheath. However, it is the knitted retention bank that is addressed in the Wilson III disclosures at col. 10, lines 27-32 and the paragraph bridging cols. 14-15 – not the sheath portion of the condom. Moreover, it is implicit in the discussion of the sheath at col. 12, lines 28-54 of Wilson III that the sheath is an elastic flexible material stretchable in all directions. Thus, Wilson III does not disclose a “sheath that ... is elastic in only a circumferential direction.”

Moreover, one of ordinary skill in the art would not look to Wilson III as a meaningful reference to combine with either Lloyd or Keyserberg. Wilson III does not describe a sanitary product for a human vagina, comprising an internally wearable absorbent plug and an externally wearable absorbent pad joined to one another by a sheath that opens through the pad. Wilson III does not describe that the plug is such that a wearer's finger can be received in the sheath to assist insertion of the plug into the vaginal orifice.

Wilson III describes a condom and a person of ordinary skill in the art seeking to produce a female sanitary product would not have consulted this document, which is clearly in a different technological field. The compressing means described in Wilson III are

capable of expansion and retraction in order to enhance retention around a penis, and this is unrelated to a sanitary device intended for insertion into a vagina. The sheath used in the present invention joins a plug to a pad and is constructed such that the plug can easily be positioned by inserting a finger in the sheath and directing the plug, and to avoid misplacement of the plug. None of these issues are considered or discussed in Wilson III. Thus, the product as claimed in claim 1 should not be considered unpatentable over the disclosure of Lloyd or Keyserberg combined with Wilson III, since it is improper to combine Wilson III with either of those references.

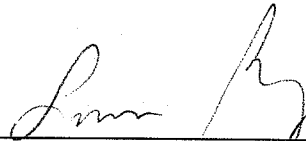
Based on these arguments, claim 1 should be allowable. Since the remaining claims are all dependent, directly or indirectly, on claim 1, they should also be allowable. Therefore, early allowance of all pending claims is respectfully requested.

The examiner also provisionally rejected the claims on the ground of nonstatutory obviousness-type double patenting over claims 1-28 of Application No. 11/920481. Applicant respectfully submits that until such time that the Examiner finds allowable subject matter, a complete determination regarding the merits of this provisional double patenting rejection cannot be made. However, if the examiner holds that a disclaimer is required in the present case, Applicant will file the required disclaimer at that time.

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Application No. 10/582,445

A Credit Card Payment is being submitted via EFS-Web authorizing payment in the amount of \$470.00, representing \$65.00 for a small entity under 37 C.F.R. § 1.17(a)(1) for a one-month extension and \$405.00 for the fee for a Request for Continued Examination. A Request for Extension of Time and Request for Continued Examination are enclosed. This amount is believed to be correct, however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Sumner C. Rosenberg', is written over a horizontal line.

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